

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-13052 of 2021
Date of decision:22.03.2021

Mohd Noushad

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. G.S.Jagpal, Advocate
for the petitioner.

SUVIR SEHGAL, J.

The hearing of the instant petition has been taken up through video conferencing due to spread of contagion.

Through the instant petition filed under section 482 of the Code of Criminal Procedure, the petitioner is seeking one opportunity to cross-examine PW-1, Harjinder Singh, subject to payment of any reasonable costs.

The facts, in brief, are that FIR No.09 dated 11.01.2018 for offence under Sections 279, 427, 304-A, IPC has been lodged on the statement of Harjinder Singh on the allegation that the accused-petitioner, who was driving a motorcycle in a rash and negligent manner, hit the motorcycle of his nephew as a result of which his nephew fell, sustained injuries and lost his life. The complainant claims that he was following his nephew in a car and was an eye-witness to the accident. Challan has been

presented and charge has been framed against the petitioner under Sections 279, 304-A, IPC. Examination-in-chief of PW-1, Harjinder Singh, has been recorded on 06.02.2019 and on 12.03.2019, but the cross-examination had to be deferred as the witness was not carrying the repair bills of vehicle. On request of the counsel for the accused, cross-examination was deferred by the trial Court, vide order dated 28.05.2019, Annexure P-9, subject to payment of costs of Rs. 300/-. By impugned order dated 18.07.2019, Annexure P-10, the opportunity to cross-examine PW-1, Harjinder Singh, was treated as nil. Revision preferred by the petitioner against the order-Annexure P-10 was dismissed by the Additional Sessions Judge, Patiala, vide order dated 02.03.2020, Annexure P-11.

Counsel for the petitioner has urged that Harjinder Singh is the star witness of the prosecution and denial of right to cross-examine him, has resulted in a serious prejudice to the accused-petitioner in his defence. He submits that on account of restrictions imposed on account of spread of the contagion, the trial is at the stage of recording of evidence of the prosecution and statements of five out of 21 witnesses have been recorded.

Notice of motion.

On asking of the Court, Mr. Harbir Sandhu, Assistant Advocate General, Punjab, who has been served with an advance copy of the petition, accepts notice on behalf of the respondent-State. He has opposed the petition on the ground that the petitioner has been negligent and does not deserve another opportunity to cross-examine the witness.

I have considered the submissions of the counsel.

No doubt, the petitioner had availed three opportunities to cross-examine the witness and even failed to pay the costs, which resulted in the passing of the impugned order by the trial Court, but the fact remains that in case the testimony of the complainant, who is also the eye-witness to the fatal accident, is not subjected to the cross-examination, it would amount to denial of a fair opportunity to the accused to defend himself. It is equally essential that the evidence given on oath is tested by cross-examination. This Court is of the view that the accused petitioner can be burdened with adequate costs for the laxity on his part.

Accordingly, the impugned order is set aside. The petitioner is granted one effective opportunity to cross-examine PW-1, Harjinder Singh, on a date to be fixed by the trial Court, subject to payment of costs of Rs.3,000/- to the said witness.

Petition is disposed of.

(SUVIR SEHGAL)
JUDGE

March 22, 2021
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes/No